

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

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|------------------------------------|---|------------------------|
| YVETTE VALLIER, |) | |
| |) | |
| Plaintiff, |) | CIVIL ACTION |
| |) | |
| v. |) | No. 20-2312-KHV |
| |) | |
| MARIA C. DAVILA, M.D. d/b/a |) | |
| AWAKENINGS KC and MIDWEST |) | |
| PSYCHIATRIC PA, et al., |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

MEMORANDUM AND ORDER

On February 27, 2019, Yvette Vallier filed suit in the District Court of Johnson County, Kansas against Maria C. Davila, M.D. d/b/a Awakenings KC and Midwest Psychiatric PA. See Notice Of Removal (Doc. #1) filed June 24, 2020 at 1–2. On May 20, 2020, plaintiff added Meritain Health, Inc. as a defendant.¹ Id. at 2; see First Amended Petition For Damages—Wrongful Death (Doc. #1-1). On June 24, 2020, defendants removed the action to this Court pursuant to the Court’s federal question jurisdiction under 28 U.S.C. § 1331, on the ground that ERISA preempts plaintiff’s state law claims. See Notice Of Removal (Doc. #1) at 4. This matter is before the Court on the Motion To Dismiss For Failure To State A Claim (Doc. #18) which Meritain Health, Inc. filed July 15, 2020. For the reasons stated below, and for substantially the reasons stated in defendant’s motion, the Court sustains the motion.

¹ Plaintiff also added as defendants CVS Health Corporation and Aetna, Inc. See First Amended Petition For Damages—Wrongful Death (Doc. #1-1). On July 6, 2020, plaintiff dismissed these defendants. See Notice Of Dismissal Without Prejudice [Pursuant] To Rule 41(a)(1)(A)(i) (Doc. #12).

Plaintiff alleges that Meritain was negligent in “failing to confirm coverage and authorize reimbursement to Defendant Davilla [sic] in a timely fashion.” First Amended Petition For Damages—Wrongful Death (Doc. #1-1) at 3. Defendant argues that ERISA preempts plaintiff’s state law claims because they rest on allegations of improper claim processing. Memorandum In Support Of Motion To Dismiss (Doc. #17-1) at 3–4. The Tenth Circuit Court of Appeals has held that ERISA preempts state law wrongful death claims which arise from the administration of ERISA benefits. See Settles v. Golden Rule Ins. Co., 927 F.2d 505, 509–10 (10th Cir. 1991) (ERISA preempts wrongful death case premised on termination of plan benefits). Plaintiff concedes that her petition fails to state a claim against Meritain. Response By Plaintiff (Doc. #22) at 1.

IT IS THEREFORE ORDERED that the Motion To Dismiss For Failure To State A Claim (Doc. #18) filed July 15, 2020 is **SUSTAINED. Defendant Meritain Health, Inc. is hereby dismissed.**

Dated this 19th day of October, 2020 at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge